

DRAFT MEMORANDUM

TO: Future Public Records Advocate

FROM: Ginger McCall, Public Records Advocate

RE: Timeline of Events Regarding Independence of Office of the Public Records Advocate

DATE: September 3, 2019

Purpose

The purpose of this memo is to give background to the future Public Records Advocate so she/he will understand the history of challenges to this office's independence and effectiveness and will be prepared to deal with similar events in the future.

This memo summarizes several significant challenges during the first Public Records Advocate's tenure. This summary includes meetings in which staff from the Governor's office attempted to pressure the Advocate into secretly representing the Governor's interests, issues related to sustainable funding for the Office, and politics which resulted in the death of proposed legislation by the PRAC.

It is the hope of the current Public Records Advocate that future Advocates, armed with the knowledge of these events, will be better prepared to be able to manage the politics inherent to this position and to zealously defend the independence of this office.

Significant Events

9/10/18 Advocate responded to Emily Matasar re: previously discussed proposed transparency agenda, suggesting inclusion of PRAC annual reporting legislative proposal. [091018 Email to Emily re Transparency Agenda]

9/24/18 Advocate received email from Emily Matasar with draft transparency agenda, asking for Advocate's feedback. Feedback sent by Advocate on 9/28/19. [092718 Email re Transparency Agenda]

11/19/18 PRAC meeting to discuss statutorily required biennial PRAC report. PRAC members agreed that Advocate should include her personal observations in the report.

[<https://sos.oregon.gov/public-records/Documents/PRAC-Meeting-Minutes-Nov-19-2018.pdf>]

11/27/18 Advocate notified via phone call with Emily Matasar that transparency, including the previously discussed transparency agenda and PRAC proposed legislation, would not be included in the Governor's legislative priorities during the 2019 Legislative Session. [112718 Phone Call re Priorities] Advocate asked Governor's office, Secretary of State, and Legislative Counsel's office for alternative ways to get the bills introduced. It was suggested that the

Advocate find members to sponsor the bills. [112718 Email to SoS re PRAC Legislation; 112719 Legislative Counsel's Office Email]

11/27/19 Draft PRAC report sent by Advocate to Governor's office, press, PRAC, and others for comment. [112718 Email to Emily re Transparency Agenda] No comment received from Governor's office.

11/28/19 Advocate sent email to PRAC regarding how to get PRAC legislation introduced since it will not be introduced by Governor, requesting telephonic PRAC meeting. [120419 PRAC Meeting on Legislation]

11/28/19 Governor's Office releases proposed budget, including funding for two additional positions within the Office of the Public Records Advocate, which had been requested by the Advocate [https://www.oregon.gov/das/Financial/Documents/2019-21_gb.pdf]

11/30/19 Final version of PRAC report sent to legislature and Governor and published online. [<https://sos.oregon.gov/public-records/Documents/PRAC-Biennial-Report-with-Appendices-nov-2018.pdf>]

12/11/19-12/14/19 Advocate met with legislators to discuss PRAC bills and get sponsors. [121118 Calendar of Rep Meetings for PRAC Bills]

12/19/19 PRAC met regarding legislative proposals in which PRAC discussed introduction of legislation by representatives. [<https://www.youtube.com/watch?v=AjoraGA309E&feature=youtu.be>]

12/18/19 Emily Matasar informs Advocate that Misha Isaak has requested that they schedule a lunch meeting between Advocate, Emily Matasar, and Misha Isaak. [121818 Email from Emily requesting meeting; 122119 Meeting Scheduling with Misha and Emily]

1/7/19 Lunch meeting with Misha Isaak and Emily Matasar in which Misha Isaak stated that he disagreed with several aspects of the PRAC report and that the Advocate should have submitted the report to the Governor's office for review in advance. Misha Isaak also stated that he did not like the PRAC annual reporting bill and two other bills related to public records that had been introduced (HB 2353 and HB 2345). [010719 Lunch Meeting w Misha and Emily]

1/10/19 Telephone Conversation with Emily Matasar in which Advocate tried to clarify the message of the 1/7/19 meeting and whether or not reports by the Advocate and PRAC need to be approved by the Governor's office before release. Emily Matasar suggested an additional meeting with Misha Isaak to clarify these issues. Governor's office reached out to schedule meeting. [011019 Scheduling meeting with Misha and Emily]

1/14/19 Email sent by Advocate regarding how to answer questions about proposed legislation. Response from Misha Isaak about including that in the scheduled 1/15/19 meeting. Request from Misha Isaak that Deputy Todd Albert not be included in 1/15/19 meeting. (011419 Pre meeting email exchange with Misha and Emily)

1/14/19 PRAC bills HB 2430 and 2431 were introduced by four representatives.
[<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2431>]

1/15/19 Advocate had meeting with Misha and Emily in which Misha Isaak asserted that he was the supervisor of the Advocate, that the Advocate is not independent except vis-à-vis mediation, and that the Advocate ought to have considered the Governor's interests before allowing the PRAC to propose HB 2431, etc. Meeting concludes with Misha Isaak warning Advocate not to speak to a member of the press about this. Full meeting summarized in 1/16/19 memorandum titled [January 15 2019 Meeting with Misha and Emily].

1/16/19 Email from Advocate to schedule appointment with Governor at the recommendation of Misha Isaak and Emily Matasar [011619 Followup email to schedule with Gov Brown]

3/13/19 Public Hearing held on HB 2431
[<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2431>]

3/26/19 Work session held on HB 2431
[<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2431>]

3/27/19 DHS and two other agencies attach fiscal assessments to HB 2431.
[<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/46311>]

4/3/19 HB 2431 is given do pass recommendation and is referred to Ways and Means
[<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2431>]

4/9/19 Meeting with Leah Horner and Jeannine Beatrice asking about fiscal assessment on HB 2431 and offering to assist in fulfilling the mandates of the proposed legislation. [040919 Follow up after DHS meeting]

4/19/19 Email from Adam Crawford, asking for meeting regarding Advocate's 040919 meeting with DHS regarding its fiscal assessment on HB 2431. [041919 Meeting with Adam re DHS Fiscal]

4/22/19 Advocate and Deputy met with Adam Crawford at Ike Box Café. Adam stated that Advocate's 04/9/19 conversation with DHS regarding its fiscal assessment was inappropriate and that agencies were not supposed to question other agency's fiscal assessments. Advocate was instructed to not have such meetings in the future. Advocate explained that the intention was not to be combative, but to explain the bill and offer to help make it less onerous for DHS to comply [041919 Meeting with Adam re DHS Fiscal]

4/24/19 Advocate sent email to Leah Horner (DHS) acknowledging having been told that she had been too aggressive in conversations about fiscal assessment and offering to work with the agency on implementation of HB 2431. [042419 Email to Leah Horner DHS]

05/19 In a conversation with another government employee about the January meeting with Misha Isaak and Emily Matasar, that employee told the Advocate that they had heard that the reason the Governor's office was upset with the Advocate was the fact that the Advocate's report was used by others to support HB 2353.

05/09/19 Meeting with Governor Kate Brown, Misha Isaak, and Emily Matasar. Prior to this meeting, Emily Matasar had written a memo to brief the Governor which she had told me about but I had not seen. Governor Brown and staff emphasized the importance of Advocate being on the “DAS Team” and the importance of “improving communication.” Advocate asked for input on potential PRAC reform ideas, but no ideas were offered. Governor did not appear interested in the idea of reforming attorneys fees provision of the law to include a “catalyst theory.” [050919 Calendar Meeting with Governor Brown].

5/29/19 Advocate informed in casual conversation with another government employee that the proposed budget increase to add two new employees had been cut from the DAS budget. Advocate then followed up with the Office of the Public Record’s Advocate’s budget expert at DAS to ask about the budget. [052919 to Kalene Smith]. Advocate also emailed the head of DAS to plead for assistance with budget [052919 Email to Katy Coba] Advocate alerted both Kalene and Katy Coba that the lack of budget increase will leave the office with a significant shortfall due to the fact that DAS only budgeted Advocate and Deputy at Step 2 and they were both placed by HR in step 9 on their respective pay scales. Both officials assure Advocate that they will look into the problem.

5/30/19 Advocate reached out to Janet Savarro (DAS) and found out that not only would there be no budget increase, but the budget would, in fact, be cut by ~50k due to DAS salary projections being fixed at Step 2. [053019 Email to Janet Savarro]

5/30/19 With Janet Savarro’s permission, Advocate reached out to Legislative Fiscal Office and Governor’s office to request reconsideration and assistance. [053019 Email to Janet Savarro; 053019 Email to Paul Siebert; 053019 Email to Emily and Misha re budget]

5/30/19 Advocate met with Emily Matasar to discuss budget situation. Emily said that she would research solutions. [053019 Calendar Meeting with Emily]

5/30/19 Advocate reached out to PRAC to inform the PRAC of the budget situation and solicit advice on how to proceed regarding the budget and HB 2431. [053019 Email to PRAC re Budget HB 2431]

6/5/19 Advocate followed up with PRAC to let the Council know that she thinks she has solved the budget issues, but that the budget should still be discussed in the July meeting.

6/6/19 Advocate met with Emily Matasar at Ike Box Café. Emily Matasar expressed displeasure at Advocate for the Advocate’s 5/30/19 email to the PRAC and ordered Advocate to add Emily Matasar to the PRAC email list and to send the PRAC an email announcing that Advocate was wrong in the 5/30/19 email about the budget. Emily Matasar reports that someone on the PRAC email list had forwarded her the Advocate’s 5/30/19 email regarding the budget and HB 2431. She tells Advocate that Advocate should not say or email things that make it look like the Advocate is “outside of” or “opposed” to the Governor’s office. Advocate once again raised the issue of independence and Emily Matasar asserted that it is the Advocate’s role to represent the Governor’s interests on the PRAC, even to the point of overruling the will of the Council. A full

summary is included in the memo, “June 6 2019 Meeting with Emily”; 060719 Email to add Emily to the PRAC; 060619 Email from Emily re PRAC Email

061119 Advocate emailed her DOJ counsel, Andy Foltz, to ask for an independent neutral review of the Advocate’s independence. [061119 Email legal inquiry to Andy Foltz; January 15 2019 Meeting with Misha and Emily; June 6 2019 Meeting with Emily; Addendum to January 15]

061319 Advocate and DOJ Counsel discussed her legal inquiry. Advocate detailed meetings with Governor’s Staff and clarified her query to include questions about the Office’s independence, the Advocate’s role on the PRAC, and who the Advocate reports to [061319 Email re telephone call with Andy Foltz]

6/19/19 Advocate was informed by a member of the media that DHS has revised its fiscal assessment. This was never posted on the OLIS website and Advocate had never been advised of this change by DHS. Advocate writes to Leah Horner regarding this. [061919 Email to Leah Horner re revised fiscal; <https://www.oregonlive.com/news/2019/06/the-cost-to-comply-with-a-public-records-bill-quietly-drops-to-0-will-lawmakers-act.html>]

6/30/19 HB 2431 died in committee upon adjournment.

[<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2431>]

070119 Email from DOJ Counsel with some initial answers on independence and a promise to follow up at a later date [070119 Email from Andy Foltz re Independence]

071519 PRAC meeting was held. At the direction of Emily Matasar, DAS representatives were invited. DAS explained that the Advocate’s budget will now be under the control of the Chief Operating Officer’s office and assured the PRAC that the operating expenses will be covered [<https://www.youtube.com/watch?v=UuXYpZq9VRY&feature=youtu.be>; 071019 Meeting invite to DAS]

072919 Email from DOJ Counsel regarding meeting to answer legal inquiry [072919 Email from Andy Foltz re Meeting]

073119 Meeting with Andy Foltz re: independence legal inquiry. DOJ counsel offers draft bullet point memo, but is reluctant to put analysis into writing. Counsel instead offers to send a DOJ attorney to speak with Misha Isaak and encourage Misha Isaak to cease his attempts to exercise control over the Office of the Public Records Advocate [072919 Email from Andy Foltz re Meeting; 073119 Draft DOJ Memo re Independence]

090419 Advocate submits letters of resignation to the PRAC and the Governor’s Office.